

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

**FILED**

**MAR 03 2011**

  
**Clerk**

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QUADIRI AYODELE,

\* CIV. 10-4160  
\* CR. 07-40055-1

Petitioner,

-vs-

UNITED STATES OF AMERICA,

Respondent.

\* MEMORANDUM OPINION  
\* AND ORDER

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Petitioner Quadiri Ayodele has filed a successive Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. Petitioner also filed a motion for leave to file his § 2255 petition out of time. Doc. 2. Petitioner requested that this Court hold his case in abeyance while he collected further documentation. Doc. 5. Petitioner submitted a signed statement and other documents and then asked for verification that his case was no longer being held in abeyance. Doc. 6, 7.

Petitioner plead guilty to a violation of 21 U.S.C. §§ 841(a)(1) and 846. He was sentenced in August of 2008 to imprisonment of 240 months. Ayodele appealed to the Eighth Circuit Court of Appeals. On February 26, 2009, the Eighth Circuit granted Ayodele's motion to dismiss and dismissed Ayodele's appeal. On April 6, 2010, this Court amended Ayodele's judgment and reduced his sentence to 120 months after the Government filed a motion under FED. R. CRIM. P. 35. Ayodele then filed his first Section 2255 motion on August 5, 2010. This Court conducted the preliminary review required by Rule 4(b) of the Rules Governing Section 2255 Proceedings regarding Ayodele's first Section 2255 motion and determined that the first motion must be dismissed as untimely pursuant to 28 U.S.C. § 2255(f).

Petitioner appealed this Court's dismissal of his first § 2255 motion to the Eighth Circuit Court of Appeals. The Eighth Circuit Court of Appeals denied a Certificate of Appealability and dismissed Petitioner's appeal.

Before a second or successive motion under 28 U.S.C. § 2255 is filed in the district court, the petitioner must move in the appropriate court of appeals for an order authorizing the district court to consider the application. A panel of the court of appeals may authorize the filing of a second or successive motion under 28 U.S.C. § 2255 only if it certifies that the petition contains:

- (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
- (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

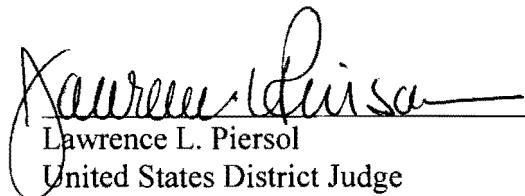
28 U.S.C. § 2255(h).

Petitioner Quadiri Ayodele has not presented the required certification from a panel of the Eighth Circuit Court of Appeals to proceed with this Section 2255 petition. Accordingly,

IT IS ORDERED that Quadiri Ayodele's Section 2255 motion and motion to file motion out of time in the above action are dismissed for failure to comply with the requirements of 28 U.S.C. § 2255(h).

Dated this 2<sup>nd</sup> day of March, 2011.

BY THE COURT:



Lawrence L. Piersol  
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY:   
Deb Peters  
DEPUTY